

NSW AGEING AND DISABILITY COMMISSION

**SUBMISSION TO THE INQUIRY INTO THE FINANCIAL
SERVICES REGULATORY FRAMEWORK IN RELATION
TO FINANCIAL ABUSE IN AUSTRALIA**

JUNE 2024

1. Background and focus of our submission

The NSW Ageing and Disability Commission (ADC) was established on 1 July 2019 with the objectives of protecting older people and adults with disability from abuse, neglect and exploitation, and protecting and promoting their rights.

A key role of the ADC is to respond to reports about older people (65 years and over or, if Aboriginal and/or Torres Strait Islander, 50 years and over) and adults with disability (18 years and over) in NSW who are subject to, or at risk of, abuse, neglect and exploitation in their family, home and community, including by providing advice, making referrals, and conducting investigations.

The submission of the ADC has been informed by our handling of reports about older people and adults with disability. Guided by this experience, the focus of our submission is on highlighting the financial abuse of older people and adults with disability, and strengthening arrangements to better prevent, identify and respond to this abuse.

2. Financial abuse of older people and adults with disability

Brief data snapshot

Between 1 January 2020 and 31 December 2023, the ADC received 15,571 statutory reports about abuse, neglect and exploitation of older people and adults with disability. The majority (77%) involved older people, including older people with disability. One quarter (23%) involved adults with disability (who were not older people).

Most reports to the ADC involve more than one form of alleged abuse.

- In relation to older people, the most common allegations involved psychological abuse (39.7%), financial abuse (28.8%), and neglect (21.2%), primarily by their adult children or other family members.
- For adults with disability, the most common alleged abuse involved psychological abuse (35.7%), neglect (25.6%) and financial abuse (18.2%), primarily by their parents or other family members.
- As identified in the tables below, the most common forms of alleged financial abuse involved financial exploitation, misuse of Power of Attorney or Enduring Power of Attorney (EPOA), theft, and preventing the adult's access to their finances.

Table 1: Main financial abuse allegations in reports about older people, 1 Jan 2020 – 31 Dec 2023¹

	No. allegations in reports about older people	% of all financial abuse allegations in reports about older people (n = 5,343)
Financial exploitation	2,069	38.7
Misuse of Power of Attorney/ Enduring POA	1,022	19.1
Theft	955	17.9
Other financial abuse	556	10.4
Preventing access to or withholding the older person's money	353	6.6

¹ The number of allegations is higher than the number of reports as there is typically more than one allegation of abuse, neglect or exploitation in each report to the ADC.

Table 2: Main financial abuse allegations in reports about adults with disability, 1 Jan 2020 – 31 Dec 2023

	No. allegations in reports about adults with disability	% of all financial abuse allegations in reports about adults with disability (n = 1,119)
Financial exploitation	431	38.5
Preventing access to or withholding the adult's money	205	18.3
Theft	190	17.0
Other financial abuse	119	10.6
Misuse of Power of Attorney/ Enduring POA	60	5.4

More data relating to reports to the ADC about abuse, neglect and exploitation of older people and adults with disability in NSW is available on the Tools and Resources section of our website: www.adc.nsw.gov.au.

Context and impact

For both older people and adults with disability, psychological abuse has commonly been used to enable financial abuse and exploitation, including verbal threats, pressure, blackmail, and harassment. Examples commonly seen by the ADC include:

- significant ongoing pressure, guilt and intimidation being applied to get the adult to provide money or assets
- the adult being threatened that they will be put into an aged care facility and/or no longer have access to their grandchildren unless they provide money or assets
- the family member stating that they will harm themselves if the adult does not provide money or assets.

Financial abuse of older people and adults with disability occurs in the context of domestic and family violence, with coercive control rife in the reports to the ADC. Financial abuse in this context serves to dehumanise the victim, isolate them, destroy their confidence and self-worth, and make them dependent on the perpetrator for all aspects of their lives, including their access to money.

Case example 1²

The ADC investigated a report about a woman with disability, Sue, who was alleged to be subject to domestic violence by her husband, who was also her carer. Sue relied on a wheelchair for mobility and required physical assistance with all daily tasks.

The ADC's investigation identified that, among other forms of coercive control, Sue had no access to banking or her finances. Her husband had control over all financial and other aspects of her life, including refusing her access to funds for basic items such as creams to help her skin integrity. Sue only had an old nightdress for clothing and was afraid to request funds from her husband for clothes; she said it would make him angry. As a result, she felt too embarrassed to go into the community and was extremely isolated.

The impact of financial abuse on older people and adults with disability is devastating and does not only affect those with significant financial resources. Reports handled by the ADC about financial abuse and exploitation regularly range from adults with millions of dollars and substantial assets, through to adults who rely on the Age Pension or Disability Support Pension and live in rental or social housing. The impact of the abuse includes older people and adults with disability with no access to their own money; no money or property; at high risk of homelessness due to property being signed over and rental/ accommodation

² The names of people and some details in our case examples have been changed for privacy reasons.

fees not being paid; and no resources to obtain food and other essentials.

The additional impact in the matters handled by the ADC is the emotional and psychological toll on the adult due to the fact that the abuse is typically perpetrated by the people they love and trust, including their own children, parents or siblings.

Key contributory factors to financial abuse of older people and adults with disability

There are a range of key contributory factors to financial abuse and exploitation of older people and adults with disability that we regularly identify in our handling of reports to the ADC, including (but not limited to):

- domestic and family violence, including coercive control (see case example 1)
- inheritance impatience and inheritance conservation – typically financial abuse driven by adult children seeking to financially benefit prior to any potential inheritance, or seeking to preserve the funds they will inherit (see case examples 2 and 7)
- poor understanding and implementation of Enduring Powers of Attorney (see case example 5)
- poor understanding and implementation of informal financial management arrangements, particularly in relation to adults with disability
- poor understanding of, and failure to put in place, family agreements or ‘assets for care’ arrangements
- targeting, and susceptibility, of some older people and adults with disability to financial scams and exploitation (see case example 3)
- provision of lump sum payments without adequate financial safeguards in place (such as lump sum payments via a redress scheme or compensation)
- ageist and ableist attitudes towards older people and adults with disability that fail to recognise and uphold their rights.

Case example 2

The ADC received a report about alleged neglect of an older person, Janet, by her daughter, who was her legal guardian and lived in Janet’s home. Janet had been discharged from hospital and her discharge plan recommended residential aged care. Although Janet had in-home support a few days per week, she also had high support needs; she could no longer make decisions about her accommodation and services, she had poor mobility, and she was doubly incontinent.

The ADC found that on the days when services did not attend her home, Janet was left lying in her own urine and faeces, placing her at high risk of skin breakdown and sepsis. Janet’s daughter told the ADC that she completely relied on the part-time in-home services to meet her mother’s full-time personal care needs.

In discussion with the daughter about Janet accessing a residential aged care placement either on a short term or ongoing basis, the daughter told the ADC that that would require the sale of Janet’s home and ‘what good is that to me?’ The ADC found that the daughter’s financial interests were too tightly enmeshed with her mother staying at home to enable her to make appropriate decisions on Janet’s behalf and for her benefit. The financial abuse occurred in the context of inheritance conservation and an inherent conflict of interest.

Online banking platforms

Online banking platforms have made it faster and easier for many people, including people

with disability, people with health concerns, and people in geographically remote areas to manage their finances and pay bills. However, online banking has also made it easier for financial exploitation to occur, particularly in relation to older people and in the context of family relationships.

While some older people are familiar with and skilled at using online banking platforms, there remains a considerable proportion of the older generations that have poor digital literacy and/or low levels of confidence in independently learning and using this technology. In many cases handled by the ADC, online banking has been set up for the older person by their child or grandchild. Often, this has been done to assist the older person and/or make it easier for the family member(s) to support the day-to-day needs of the older person. However, we frequently identify cases where:

- the family member then uses the online banking details and password/code to access the account for their own financial benefit, without the knowledge of the older person
- a family member has set up online banking for the older person without the older person's knowledge, using their personal details and account information.

In our experience, there are opportunities to strengthen protections associated with online banking. In particular, in many reports we have handled:

- The set-up of online banking has represented a major shift in how the adult has managed their finances to date. This has included matters where the adult has previously tended to access the physical bank branch for their banking needs or has otherwise needed assistance to conduct their banking.
- The purchases, transfers, and payments using online banking have been markedly different from the adult's usual spending pattern and behaviour. This has included extensive use of the adult's account for online gaming and gambling; repeated transfers of large sums of money to new domestic or international accounts; and payments for goods or services that are atypical for the adult and should raise questions about the use of their account.

In relation to both aspects above, it is not currently evident that this noticeable shift in banking practice or behaviour adequately or consistently prompts checks by the financial institution with the customer regarding potential fraud or exploitation.

We note that physical bank branches provide an important financial abuse safeguard for a range of people, including many older people. In the matters we have handled, this has included branch staff being familiar with the customer and identifying instances where there has been a change in behaviour, questions about the customer's decision-making capability, or concerns about the interaction between a family member and the customer in relation to their money or accounts. In a range of cases, the in-person contact has enabled branch staff to speak privately with the customer to clarify the situation and check on their welfare, and facilitate safeguarding actions by the bank. Most of the reports to the ADC by banks to date have been made in response to in-person contact with the customer in the branch.

Approaches by financial institutions to identify, record and report financial abuse

The ADC welcomes the significant steps that have been taken by financial institutions on a systemic level to help prevent and support appropriate actions to respond to financial abuse in the context of domestic and family violence and/or involving vulnerable customers. Among other things, this has included actions to:

- block abusive messages in financial transaction payment text fields
- update terms and conditions to suspend, cancel or deny customers from access to

- their accounts if they engage in financial abuse
- identify National Redress Scheme payments to enable safeguards
- facilitate access to community services (such as through CommBank Next Chapter).

We appreciate the substantial and ongoing work of the Australian Banking Association (ABA) in this area, including actions to gain systemic reforms to reduce financial abuse, and provision of guidelines to improve bank practice and support for vulnerable customers. In relation to the latter, we note the industry guidelines that have been issued on *Preventing and responding to domestic and family violence*³, and *Preventing and responding to financial abuse (including elder financial abuse)*⁴.

In our handling of reports about alleged financial abuse of older people and adults with disability in NSW, we have noted and welcomed the role played by customer advocates/ vulnerable customer support units. In a range of cases, we have seen positive work by financial institutions to identify and take timely actions in response to suspected financial abuse of older people and adults with disability, including:

- branch staff speaking with the customer alone, sometimes in the face of significant resistance by the subject of allegation
- providing safeguards and reporting suspicious conduct where a party has presented an EPOA but has not supplied any evidence to indicate that the customer (the principal) no longer has capacity to manage their own funds
- putting in place safeguards to prevent the continuing loss of significant funds pending investigation, review, advice and/or further evidence – for example, changing the online banking account to ‘view only’ mode and setting a daily withdrawal limit of \$200 pending review and discussion with the older person and the subjects of allegation (family members)
- implementing safeguards in response to concerns raised by the ADC, including freezing accounts, putting daily withdrawal limits in place to prevent the bulk withdrawal of funds, and requiring the customer to attend the branch to conduct transactions (where reasonable and appropriate).

Case example 3

A bank contacted the ADC about their concerns that an older person, Di, was being financially exploited. They noticed that a series of regular online transfers were being made on the same day each week from Di’s bank account, with the total value of the transactions approaching \$50,000. Di had been a regular visitor to the branch in the past, and branch staff were aware that in recent times her health had declined such that she left her home less often and they knew she was receiving weekly in-home aged care services.

With Di’s consent, a safeguarding plan was developed. The bank limited access to Di’s account to ‘view only’, and the transactions were referred to NSW Police. Police confirmed that large amounts of money had been deducted from Di’s account and they commenced an investigation into an alleged online money scamming operation.

However, there is significant scope to strengthen the role that financial institutions play in identifying, recording and reporting financial abuse of older people and adults with disability:

Earlier identification of potential financial abuse

The ADC often reviews bank records as part of investigating reports about alleged

³ <https://www.ausbanking.org.au/wp-content/uploads/2021/05/ABA-Family-Domestic-Violence-Industry-Guideline.pdf>

⁴ <https://www.ausbanking.org.au/wp-content/uploads/2021/07/ABA-Financial-Abuse-Industry-Guideline.pdf>

financial abuse of older people and adults with disability. In a range of cases, the bank records have identified significant changes in the adult's transactions and/or banking behaviour that should reasonably have triggered questions and closer examination by the financial institution regarding potential fraud or exploitation, but this had not occurred.

As noted earlier, in some cases these changes have been assisted by a shift to internet banking, but this has not always been the case. More broadly, we have noted a range of 'red flags' that have not been identified or acted on by the relevant bank prior to the ADC raising concerns, including:

- changes to financial habits, such as frequent large or maximum limit ATM withdrawals
- atypical multiple transactions for online gaming or gambling
- atypical insufficient balance activity
- uncharacteristic actions to transfer large sums of money online (including internationally).

The ADC is keen to see additional measures taken by financial institutions to better detect atypical banking behaviour and their early action on potential financial abuse.

Actions in response to potential financial abuse, including reporting

Overall, the ADC sees mixed practice in relation to the actions of financial institutions to suspected financial abuse of older people and adults with disability. While we have seen proactive and highly responsive approaches, we have also seen a lack of, or delayed, actions in response to concerns. At a minimum, we are keen to see systemic steps taken by financial institutions to improve their internal systems to ensure that information received from investigative and/or adult safeguarding bodies is considered and acted on in a timely way.

Case example 4

The ADC received a report of alleged financial abuse of an older person, Mary, by her son. Mary told us that her son uses her bank card to make purchases for her. She said that her son would not steal from her but consented to the ADC looking into the matter for her own peace of mind.

We issued a notice to Mary's bank requiring the provision of information and asked them to consider safeguards for her account, noting that her card was not in her possession. We identified over \$100,000 in suspicious transactions, including over \$60,000 withdrawn after we had issued the notice to the bank.

We issued a notice to the bank that had received the suspicious payments and sought to have those funds frozen, and we referred the potential fraud to the police. Mary agreed that she needed assistance to manage her funds, but she could not nominate a trusted individual to do this. The ADC made a financial management application to the NSW Civil and Administrative Tribunal (NCAT) and NSW Trustee was appointed to be Mary's financial manager.

We met with the customer advocate of Mary's bank, and a review was conducted of actions in this matter. Mary subsequently recovered over \$60,000 and an additional goodwill payment from the bank. The bank is improving training and their systems to strengthen safeguarding in response to financial abuse investigations.

More broadly, we are conscious that there are currently significant limitations on what financial institutions can proactively do in response to suspected financial abuse, primarily associated with the *Privacy Act 1988* (Cth). There is a pressing need to address these limitations as a matter of priority to better prevent and respond to financial abuse of

particularly vulnerable customers, including older people and adults with disability. (See section 3 in relation to this issue).

Growth and ongoing risks of financial abuse of older people

Calls and reports to the ADC have increased year on year since our commencement in July 2019. Between 1 July 2019 and 30 June 2023, calls to the ADC increased by 34% and reports increased by 85%. There is significant and increasing demand, driven in part by increased awareness of and exposure to the work of the ADC, but also by key external factors that need to be taken into account in strategies to prevent and respond to financial abuse.

We expect the prevalence of financial abuse of older people in our communities to continue to increase due to a combination of factors, including:

- continuing growth in the ageing population – while people aged 65 years and over comprised 17% of the NSW population in 2022, this is projected to increase to 27% by 2041⁵
- the relative wealth, including assets, held by older generations and the pending generational transfer of this wealth
- financial and housing pressures on younger generations.

It is imperative that financial abuse of older people is recognised as a priority public policy issue and that there is a concerted, multifaceted and coordinated approach across government, industry and community to reduce the risks.

3. Effectiveness of existing legislation, common law, and regulatory arrangements

Enduring Powers of Attorney legislation

An Enduring Power of Attorney (EPOA) is an important mechanism for enabling individuals to appoint a trusted party to act on their behalf in relation to financial and legal decisions and comes into effect or remains in force in the event that the individual is no longer able to make those decisions. However, as identified in Tables 1 and 2 above, misuse of an EPOA is also a common way in which financial abuse occurs, particularly in relation to older people.

In relation to financial abuse facilitated via misuse of an EPOA in NSW, the work of the ADC has identified that:

- overall, there is a poor understanding of the EPOA requirements, particularly among appointed attorneys, which contributes to financial abuse of the principal
- there are gaps in the existing NSW laws in relation to EPOA, including that there are no offence provisions relating to misuse of an EPOA, and there is no easily accessible mechanism for enabling principals to be compensated for funds that have been taken by an attorney through misuse of the EPOA.

Case example 5

The ADC received a report about alleged financial abuse of an older person, Sylvia. The report alleged that Sylvia's daughter, who was the appointed EPOA, had withdrawn significant amounts of money from Sylvia's account.

⁵ NSW Department of Planning, Housing and Infrastructure, NSW Planning Portal, 2022 NSW Common Planning Assumption Projections, accessed 20 February 2024.

Our investigation identified that over \$300,000 had been withdrawn from Sylvia's account and deposited into her daughter's account. The daughter was unable to provide any evidence that the money had been invested or spent in Sylvia's interest.

The ADC made a financial management application in relation to Sylvia, which resulted in the EPOA being set aside and NSW Trustee being appointed as her financial manager. NSWTCG pursued the repayment of funds from Sylvia's daughter, which was successful.

In November 2023, we made a comprehensive submission to the Commonwealth Attorney-General's Department consultation on achieving greater consistency in laws for financial enduring powers of attorney⁶. Our submission was focused on seeking to strengthen the laws and processes in relation to EPOA without making the requirements so onerous that they deter parties from taking up this option.

We support actions to achieve greater consistency in EPOA laws across Australia. The final report from the Australian Law Reform Commission's elder abuse inquiry in 2017 articulated the benefits of harmonised EPOAs, including that:

- it would enable greater knowledge and certainty across Australia on the uses of EPOA creation and relevant safeguards
- it would enable meaningful national education on EPOA and the responsibilities of attorneys, and
- increased consistency and efficiency would be achieved in the practice and expectations of institutions that deal with EPOA, such as banks and other financial services.

Credit legislation

In our experience, there is a need for greater scrutiny in how lenders fulfil their obligations for responsible lending, particularly in relation to more vulnerable populations, including people with cognitive impairment. The below case provides a useful example.

Case example 6

The ADC received a report about alleged financial abuse of a woman with cognitive impairment, Maya, who worked in supported employment. With Maya's consent, we conducted an investigation into the allegations.

The ADC identified that Maya's Centrelink payment and wages were being paid into an account that was being used to pay family bills and to fund large cash withdrawals. There was also a car loan in Maya's name despite her being unable to drive, and multiple Centrelink loans and short-term loans from payday lenders.

Maya had no understanding of the amounts owing, how interest was calculated on the loans, or the consequences of the failure to repay the loans. She said that her parent had signed her up to loans to help the family.

It appeared that Maya's funds were being used to fund expenses for the family, such as to pay for car repairs and insurance, and that these resources were not being used for her benefit. In this regard, the reported concerns included that Maya had to walk the entire long distance to her supported employment and back in all weather conditions.

We note that a similar case involving the sale of a life insurance policy to a man with an intellectual disability who did not understand its conditions was found in 2019 by the Banking Royal Commission as an example of unconscionable conduct under the *Australian*

⁶ <https://ageingdisabilitycommission.nsw.gov.au/reports-and-submissions.html>

*Securities and Investments Commission Act 2001.*⁷

The principles for responsible lending in the *National Consumer Credit Protection Act 2009* (Cth) and ASIC's Regulatory Guide 209 *Credit licensing: Responsible lending conduct* do not make specific reference to determining whether a borrower is able to provide informed consent, understands the terms of a loan contract, or is subject to improper influence. The advice that the Credit Act and Regulatory Guide 209 give lenders about assessing a borrower's suitability focuses on how lenders should assess a potential borrower's 'ability to pay'. In our view, this is inadequate – a borrower may have the ability to pay but have no understanding of the contract and what the loan means, and they may be subject to pressure or undue influence to take out the loan for the benefit of another party.

We consider that there is a need to amend the ASIC Regulatory Guide to provide guidance to enable lenders to better assess whether loan applicants are doing so willingly and voluntarily with informed consent. Appropriate actions should also be taken to ensure that staff of credit providers are adequately trained to prevent vulnerable individuals being signed up to loan contracts they do not understand.

Privacy legislation

It is critical that actions are taken as early as possible in response to identified or suspected financial abuse of older people and adults with disability. This includes parties being able to safely contact the adult to discuss the concerns and safeguarding options, and in relevant cases to refer matters to adult safeguarding bodies who may be able to investigate. However, the restrictive provisions in the Privacy Act present a barrier to key parties, including banks and other financial institutions, taking necessary actions to support adults subject to, or at risk of, financial abuse.

Under section 16A, Item 1 of the *Privacy Act 1988* (Cth), a permitted general situation for an APP entity collecting, using or disclosing personal information includes when:

- it is unreasonable or impracticable to obtain the individual's consent to the collection, use or disclosure, and
- the entity reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

However, this does not adequately cover financial abuse. The Office of the Australian Information Commissioner (OAIC) APP Guidelines identify that threat to life, health or safety 'can include a threat to a person's physical or mental health and safety. It could include a potentially life-threatening situation or one that might reasonably result in other serious injury or illness. The permitted general situation would not ordinarily extend to a threat to an individual's finances or reputation.'⁸

In our experience, the impact and effects of financial abuse are devastating, with significant and ongoing consequences for the adult with disability or older person. All efforts should be made to remove barriers to enable banks and financial institutions to take necessary actions, including to provide information to adult safeguarding and other investigative agencies, where they identify or suspect that the customer may be subject to financial abuse, and it is unreasonable or impracticable to obtain the customer's consent.

Section 13(4) and section 15 of the *Ageing and Disability Commissioner Act 2019* (NSW)

⁷ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019) *Final Report, Volume 2, Case Studies*, p313.

⁸ OAIC APP Guidelines, Chapter C: Permitted general situations, p5.

provide protections for persons who make a report to the ADC in good faith, including that they are not liable to any civil or criminal action, or any disciplinary action, for making the report. However, notwithstanding these protections, in our experience banks are reluctant to make reports even where there is reasonable suspicion that financial abuse is occurring, due to the current restrictions of the Privacy Act and the APP Guidelines.

In our view, there are a number of ways this issue could be resolved, including (but not limited to):

- amending the APP guidelines to include financial abuse within the scope of a ‘serious threat to an individual’s life, health or safety’ under section 16A
- amending the Privacy Act to ensure that serious threat to an individual’s financial circumstances is included in section 16A.

In March 2023, we made a submission in response to the Privacy Act Review Report, supporting Proposal 17.3 that ‘Further consultation should be undertaken to clarify the issues and identify options to ensure that financial institutions can act appropriately in the interests of customers who may be experiencing financial abuse or may no longer have capacity to consent.’⁹ Given the above issues, we indicated our view that the further consultation recommended in Proposal 17.3 should include the ADC and representatives of the other State and Territory adult safeguarding agencies,¹⁰ and should occur as a matter of priority.

On 28 September 2023, the Australian Government released its response to the Privacy Act Review Report and indicated in-principle agreement to Proposal 17.3. To date, the ADC has not been contacted in relation to any actions to implement this proposal. We maintain our view that this consultation should be undertaken as a matter of priority and include the ADC and equivalent state and territory adult safeguarding agencies.

ADC information sheet for banks

In light of the ongoing issues associated with the Privacy Act and associated guidance, in May 2024 we produced an information sheet for financial institutions about reporting alleged financial abuse of older people and adults with disability to the ADC (see Appendix). The information sheet identifies the provisions in the *Ageing and Disability Commissioner Act 2019* (NSW) that enable banks to make reports, and that protect banks and their representatives for making reports. The information sheet was modelled on a similar sheet produced by the ACT Human Rights Commission and was reviewed by the Office of the Australian Information Commissioner prior to finalisation. The ABA has disseminated the information sheet to its member banks.

4. Role of government agencies in preventing and responding to financial abuse

State and territory adult safeguarding agencies

Numerous inquiries and reviews¹¹ over an extended period of time have recommended that states and territories should establish an independent government agency that can receive and respond to allegations of abuse, neglect and exploitation of older people and adults with disability, with investigative powers.

⁹ Australian Government Attorney-General’s Department (2022) *Privacy Act Review Report*, p10.

¹⁰ ACT Human Rights Commission, Queensland Public Guardian, and SA Adult Safeguarding Unit.

¹¹ For example, final reports from the NSW Legislative Council inquiry into elder abuse in NSW (2016), the Australian Law Reform Commission inquiry into elder abuse (2017), the NSW Law Reform Commission review of the *Guardianship Act 1987* (2018), and the NSW Ombudsman standing inquiry into abuse and neglect of adults with disability in home and community settings (2018).

The ADC is one of four state/territory government adult safeguarding agencies that have investigative powers. Adult safeguarding bodies such as the ADC play a key role in responding to reports of older people and adults with disability who are subject to, or at risk, of abuse, including through providing information, advice, referrals, facilitating supports and safeguards, conducting investigations, and taking further action as needed. We also have an important focus on educating and building community capability in preventing, identifying and responding to abuse, neglect and exploitation of our cohorts.

Following consideration of the existing arrangements, the Disability Royal Commission (DRC) recently noted that it is clear that the existing adult safeguarding bodies are meeting a significant level of need.¹² The DRC recommended the establishment and implementation of nationally consistent adult safeguarding functions¹³, including that each state and territory should:

- introduce adult safeguarding laws
- establish an adequately resourced independent statutory body to administer information and referral, advice and support, coordination, investigation, public reporting and community education functions.

The ADC strongly supports the recommendations of the DRC to have an adult safeguarding agency with consistent functions in each state and territory.

In 2021, we established a Community of Practice (COP) with the other three safeguarding bodies that have investigative functions in relation to abuse, neglect and exploitation of adults with disability and older people. Among other things, the meetings provide an opportunity to discuss common challenges and emerging issues, share information about practice developments, and explore opportunities for gaining consistency across our work. Financial abuse of older people and adults with disability is a frequent topic of discussion at the COP meetings.

Evident challenges for adult safeguarding bodies in relation to matters involving alleged financial abuse are managing high and increasing demand, and the fact that financial abuse investigations tend to be highly resource intensive. The ADC currently has significant challenges in seeking to meet demand within existing resources, and we expect reports of financial abuse to continue to increase. In our view, there is a need to consider whether a specific approach or model for investigating reports of financial abuse is required (particularly financial abuse of older people), and the potential role the financial services industry should play, including in relation to resourcing.

Other government agencies

Preventing and responding to financial abuse is not solely the responsibility of financial institutions, police and adult safeguarding agencies. It is vital that preventing and responding to financial abuse of more vulnerable cohorts in particular, including older people and adults with disability, is a whole of community and cross-agency responsibility.

Government frontline and service delivery agencies are in an important position to identify and respond to potential financial abuse, including (but not limited to) housing, ageing, disability and community service agencies, local government, and health. For example:

- health and community service-related agencies are in a key position to identify financial abuse involving inheritance conservation, in which family members refuse to dissolve or release assets or funds owned by the parent(s) to meet their care needs

¹² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023), Final Report, Executive Summary, p172.

¹³ See Disability Royal Commission recommendations 11.1 and 11.2.

- housing and local government agencies are well placed to identify potential financial abuse that is resulting in the older person or adult with disability being unable to pay their rent, rates or bills
- agencies with more regular contact, such as health and housing, may receive disclosures by the older person or adult with disability and requests for assistance.

In the experience of the ADC, there is mixed awareness across relevant government agencies of financial abuse and their role, notwithstanding available guidance.¹⁴ To facilitate interagency collaboration and action at a local level to better prevent and respond to abuse of older people and adults with disability, the ADC supports 19 Abuse Prevention Collaboratives¹⁵ across NSW. The Collaboratives typically include representatives from Health, Police, local government, and non-government ageing and/or disability services, and they undertake a wide range of abuse prevention and awareness-raising activities that are targeted to and informed by their local communities. Some of the resources developed include Wellbeing Checklists, which include questions for individuals to identify whether they or someone they know may be experiencing or at risk of abuse, including financial abuse.

Services Australia

Services Australia has an important role to play in preventing, identifying and responding to financial abuse of older people and adults with disability. Many of the reports the ADC receives about financial abuse involve parties who are recipients of Centrelink payments – including income support and/or carer allowance/payments.

Case example 7

The ADC investigated a report of alleged financial abuse of an older person, Jin. Jin's housing provider had commenced actions against her in relation to rent arrears and she was at risk of becoming homeless. Jin could not understand why she was in arrears as her rent was automatically deducted via Centrepay directly from her pension.

We conducted an investigation with Jin's consent. The ADC's investigation identified that there were suspicious cash withdrawals and transfers from her account that were not being used for Jin's benefit.

Information obtained from Services Australia identified that requests had been made by Jin's son to cease the Centrepay payments and also for emergency advance payments. This created the arrears and placed Jin at risk of homelessness. Changes had been made to Jin's Centrelink and mygov accounts via a mobile device without her knowledge.

Given Services Australia's role and the information it holds, there are ways in which the agency could strengthen activities in relation to financial abuse of vulnerable cohorts. For example:

- When setting up Age Pension and the Disability Support Pension (DSP) payments, Centrelink could:
 - play a greater role in educating applicants that these payments are for the use and benefit of the recipient and not a general family spending account
 - consider what, if any, safeguards are in place to ensure the money is kept separate from other parties' funds so there is greater transparency around spending – for example, requiring the payment to be deposited in an account

¹⁴ For example, the NSW Interagency Policy on preventing and responding to abuse of older people (https://www.facs.nsw.gov.au/_data/assets/pdf_file/0003/591024/NSW-Interagency-Policy-Abuse-of-Older-People.pdf), and resources produced by the ADC (<https://ageingdisabilitycommission.nsw.gov.au/tools-and-resources/for-professionals.html>).

¹⁵ <https://ageingdisabilitycommission.nsw.gov.au/tools-and-resources/for-professionals/collaborative-hub.html>

in the name of the recipient.

- Services Australia Aged Care Specialists have a relevant role in supporting families to understand the aged care system and identifying and managing concerns about potential inheritance conservation or inheritance impatience at a local level.
- Services Australia could make better use of its data holdings to identify inconsistencies and potential areas of risk for vulnerable adults that may require follow-up by their aged care or disability specialists. For example, identifying where an individual is receiving the Carer Payment for providing constant care to an adult with high support needs but there are no recent Medicare or Pharmaceutical Benefit Scheme claims in relation to the adult. Use of the existing data holdings could enable earlier identification of individuals and households who may need additional support, as well as individuals who are subject to potential financial abuse and neglect.

5. Funding and operation of relevant advisory and advocacy bodies

Advocacy and legal services

Advocacy and legal services for older people and adults with disability play a vital role in providing informed advice and support in relation to financial abuse, including raising complaints or concerns with financial institutions, working alongside the adult to obtain appropriate financial safeguards, and pursuing actions in relation to compensation or other measures. Aside from the valued and complementary work undertaken by the advocacy and legal services in relation to individual matters, we note the effective role they also play in identifying and escalating systemic issues affecting people with disability and/or older people, including in relation to financial abuse. It is important that these support services continue to receive appropriate funding to undertake their work as demand increases.

Mediation services

Mediation services are an essential element in preventing and resolving financial abuse. They provide an approach that appropriately recognises and values the relationship of the involved parties and seeks to forge an outcome that prevents or stops the abuse and supports healthier communication and relationships, where possible. In recent years, mediation services, such as the Let's Talk program in NSW, have been affected by an unreliable funding base, with only 12-month funding extensions at a time. In our view, mediation services should be recognised as a key component of an abuse prevention and response framework and supported by longer funding contracts to enable their effective operation.

Redress support – community of practice

In 2021 and 2022, the ADC held roundtables with NSW stakeholders to explore concerns that had been raised with us about the circumstances of older survivors of institutional child sexual abuse and the need to improve safeguards from financial abuse and exploitation, including in relation to National Redress Scheme payments.

Roundtable participants identified a range of areas requiring attention to improve financial safeguards for survivors. The work of the ADC has highlighted the importance of survivors receiving clear and accessible information about financial abuse, at the right time. While redress support services and others have useful information about financial abuse and steps that survivors can take to protect themselves and their NRS payment, we are conscious that most NRS applicants do not access support services.

More broadly, stakeholders in our roundtable discussions were consistent in their views about the lack of financial literacy of this population, the importance of financial counselling support for survivors, and the need for:

- a significant focus to be put on Aboriginal and multicultural communities
- creative approaches to engage survivors in conversations about financial counselling and safeguards, and
- more culturally informed and accessible communications that talk about money in a culturally appropriate way.

Over the past year, the ADC has been working in conjunction with SAMSN to seek a Community of Practice to be established in relation to redress schemes, to enable more coordinated and collaborative actions to better prevent and respond to financial abuse of redress recipients, including action on areas identified through the previous roundtables. While useful meetings have taken place with the Department of Social Services regarding modest funding for the COP, and the potential role Financial Counselling Australia may be able to play in facilitating the COP, we are not aware of any outcome from these meetings to date.

Appendix: ADC information sheet

Reporting financial abuse to the NSW Ageing and Disability Commission

An information sheet for financial institutions

Anyone who has reasonable grounds to believe that an adult with disability (aged 18+) or older adult (aged 65+, or 50+ if Aboriginal or Torres Strait Islander) in NSW is subject to, or at risk of, financial abuse may be authorised by law to bring their concerns to the NSW Ageing and Disability Commission (ADC).

Authorisation for raising concerns with the ADC can be found at section 13(1) of the *Ageing and Disability Commissioner Act 2019* (ADC Act) which states that a person may make a report to the ADC about an adult with disability or older adult if the person believes on reasonable grounds that the adult is subject to, or at risk of, abuse, neglect or exploitation.

Importantly, financial institutions who raise concerns about suspected financial abuse of a customer with the ADC have protections under the law. This includes an exception to the requirements of the *Privacy Act 1988* relating to the disclosure of personal information to a third party (Australian Privacy Principle 6) and protections from civil and criminal liability under the ADC Act.

Privacy protections

Section 13(1) of the ADC Act may allow financial institutions who suspect financial abuse or exploitation is occurring to disclose to the ADC personal information about a customer which the ADC can handle as a report. Section 13(1) of the ADC Act may allow for the disclosure of personal information in accordance with the 'authorised by law' exception in Australian Privacy Principle (APP) 6.2(b).

An APP entity that is 'authorised' under an Australian law has discretion to handle information in a particular way. The authorisation may be implied rather than expressed in the law (APP Guidelines B.133).

A statute that authorises an APP entity to collect personal information about an individual from a third party impliedly authorises the third party to disclose the individual's identity to the entity (APP Guidelines B.134). Authorisation for making a report pursuant to s 13(1) of the ADC Act points to an implied authorisation to disclose the personal information to make the report.

General protection from liability under the ADC Act

Section 13(4) of the ADC Act provides that if a person, acting in good faith, makes a report to the ADC in accordance with section 13, that person is not liable to any civil or criminal action, or any disciplinary action, for making the report.

Where to raise concerns

The ADC's Ageing and Disability Abuse Helpline is safe, accessible, and free.

We can talk through options for trying to resolve concerns informally and provide information, support, and make referrals to appropriate parties.

The ADC has own motion powers that enable us to handle a report where a reporter wants to remain anonymous or confidential.

We may investigate the allegations and/or try to resolve the concerns and improve safeguards for the adult. Our intention is always to improve the safety of the adult and uphold their rights.

If we can't deal with an issue or the issues cannot be resolved through our process, we will talk to you about other options.

Contact our Ageing and Disability Abuse Helpline on 1800 628 221 or helpline@adc.nsw.gov.au (Mon – Fri, 9-4)

Website: www.ageingdisabilitycommission.nsw.gov.au

Please note that this is not legal advice. We would encourage financial institutions to seek their own legal advice regarding their ability to disclose information to the ADC.